

**NMCI Contract N00024-00-D-6000
Awarded 6 October 2000**



**Attachment 16
Contract Transition Planning and Assistance Services**

CONTRACT TRANSITION PLANNING AND ASSISTANCE SERVICES

This Attachment describes the roles and responsibilities of the Government and Contractor (the "Parties") for end of Contract Transition Planning Services and end of Contract Transition Assistance Services if ordered by the Government. For end of Contract Transition Planning Services, if ordered, Contractor shall work with the Government, in accordance with Section 1.2 of the Contract and Section 2 of this Attachment 16, to provide the transition plan and transition planning inventories described therein of NMCI equipment, hardware and infrastructure, third-party agreements, and intellectual property assets all of which will assist the Government in the orderly transition of NMCI Services from Contractor to Government or its Successor Contractor(s) (defined below) if this Contract is terminated or expires. For end of Contract Transition Assistance Services, if ordered Contractor shall assist the Government, in accordance with Section 1.2 of the Contract and Section 3 of this Attachment, in the transfer of Contractor knowledge, information and expertise to enable the Government or the Successor Contractor(s) to continue operation of NMCI Services if this Contract is terminated or expires.

1. DEFINITIONS.

- a. Contractor Proprietary Software means computer software that is owned by Contractor and used solely by Contractor in providing NMCI Services, and includes Related Software Documentation.
- b. Contract Transition Assistance Services means the services provided during the Transition Assistance Period that are described in Section 3 of this Attachment.
- c. Contract Transition Planning Services means the services provided during the term of this Contract that are described in Section 2 of this Attachment.
- d. Equipment and Infrastructure Assets means all equipment, infrastructure, hardware, and all other tangible assets (other than Legacy Assets) owned or leased by Contractor and used solely by Contractor in providing the NMCI Services.
- e. Legacy Assets means the Government's existing information technology equipment and infrastructure acquired by Contractor pursuant to Section 6.23 ("EXCHANGE/SALE AUTHORITY") and that was transferred to Contractor at Assumption of Responsibility.
- f. Licensed Software and Other Intellectual Property means Contractor Proprietary Software and Other Intellectual Property for which the Government has negotiated and paid for a license to Use.
- g. NMCI Freeze-Date means the date upon which the Contractor is no longer responsible for any maintenance, support or enhancement activities on the NMCI.
- h. NMCI Purposes means any activities in which Department of the Navy is a party and which are directly related to NMCI Services, but do not include the rights to use, modify, reproduce, manufacture, release, perform, display or disclose Contractor's intellectual property or other proprietary information for other Governmental or commercial purposes, or the rights to authorize any other Governmental entity or third party to do so.
- i. NMCI Services means all services being performed by Contractor under this Contract as of the effective date of expiration or termination of this Contract, other than the Contract Transition Assistance Services and Contract Transition Planning Services.
- j. Offeror(s) means one or more third parties who have submitted proposals for the contracts under which the NMCI Services are continued after termination or expiration of this Contract.
- k. Other Intellectual Property means intellectual property, other than proprietary software, relating to the design and operation of the NMCI that is owned by Contractor, the legal forms for which may be patents, copyright, technical data, trade secrets, mask works and trademarks, and other intellectual property, that is licensed to

Contractor and the Use of which Contractor is authorized to license, sub-license or transfer to Government, all of which are being used in providing NMCI Services to the Government.

- l. Related Software Documentation means all materials, documentation, specifications, design documents, technical manuals, user manuals, flow diagrams, file descriptions, source codes, object codes, other written information that describes the function and use of software and all other tangible embodiments of computer software.
- m. Successor Contractor(s) means the one or more contractors who are selected by the Government to be awarded contracts under which the NMCI Services are provided after termination or expiration of this Contract.
- n. Support Contractor(s) means any contractor which provides support to the Department of Navy in the administration of this Contract or in subsequent contract(s) for the same or similar services and which is under written confidentiality obligations to Contractor covering the purpose for which information is being provided.
- o. Third-Party Services Contracts means the third-party contracts for services and other items, if any (which do not include leases of tangible assets, addressed in Section 3.4 below), that are solely used by Contractor in providing the NMCI Services.
- p. Third-Party Software Licenses means the third-party licenses for use of software that is used solely by Contractor in providing the NMCI Services.
- q. Transition Assistance Period means the period of time described in Section 3.2(a) of this Attachment.
- r. Transitioned Assets means those Equipment and Infrastructure Assets for which the Government has elected to purchase or assume leases.
- s. Transitioned Third-Party Services Contracts means the Third-Party Services Contracts for which the Government has exercised the option to transfer or assign the contracts to the Government or to Successor Contractor(s).
- t. Transitioned Third-Party Software Licenses means the Third-party Software Licenses for which the Government has exercised the option to transfer or assign the licenses to the Government or to Successor Contractor(s).
- u. Use means the physical and legal use and the right to access, view, distribute, copy, maintain, display, perform, modify, make and enhance a specified item of property.

2. CONTRACT TRANSITION PLANNING SERVICES.

2.1 General.

The Government and Contractor agree that advance planning for the orderly transition of NMCI Services, which may include an up-to-date inventory of Equipment and Infrastructure Assets, Third-Party Services Contracts, Third-Party Software Licenses, Contractor Proprietary Software, and Other Intellectual Property, will enhance the orderly transition of NMCI Services to the Government or its Successor Contractor(s) if this Contract is terminated or when it expires. Accordingly, the Government may order, and Contractor shall provide, Contract Transition Planning Services at any time during the period of performance of this Contract after June 30, 2006 pursuant to mutually agreed upon pricing and other terms and conditions. The Government shall make payment to Contractor for Contract Transition Planning Services in accordance with Contract Section 5.9.3.

2.2 Contract Transition Plan.

- (a) **Ordering and Initial Delivery.** Contractor shall, within 45 days of Government's placement of an order, deliver an initial plan for the transition of NMCI Services (the "Transition Plan") setting forth the specific transition tasks, the Government or Successor Contractor(s) responsibilities, the dependencies, the staffing requirements and the schedule pursuant to which NMCI Services would be transitioned to the Government or its Successor Contractor(s).
- (b) **Contents of Transition Plan.** The Transition Plan will describe the orderly, systematic, coordinated and sequential manner and time frames (not to exceed 180 days or extend beyond 30 September 2010) in which (i) the performance of the NMCI Services, and (ii) if applicable, the Transitioned Assets, the Licensed Software and Other Intellectual Property, the Transitioned Third-Party Services Contracts, the Transitioned Third-Party Software Licenses, or all of the foregoing, are to be transitioned to the Government or its Successor Contractor(s); provided that, in no event will Contractor be obligated to transition all, or any part of, the Transitioned Assets, the Licensed Software and Other Intellectual Property, the Transitioned Third-Party Services Contracts or the Transitioned Third-Party Software Licenses prior to the expiration or termination of this Contract and prior to the Government's or its Successor Contractor's payment for such items or execution of novation agreements. If and as applicable, the Transition Plan also will describe the orderly, systematic, coordinated and sequential manner and time frames in which Government or Successor Contractor(s) furnished replacement equipment and infrastructure, software and other intellectual property and third-party services will be integrated into the NMCI and the corresponding portion of Equipment and Infrastructure Assets that will not be acquired by Government or its Successor Contractors, the Contractor Proprietary Software and Other Intellectual Property that will not be licensed by Government or its Successor Contractors and the corresponding portions of Third-Party Services Contracts and Third-Party Software Licenses that will not be assumed by Government or its Successor Contractor(s), will be removed from the NMCI. The Government shall not require Contractor to disclose any Contractor Proprietary Software or Other Intellectual Property or any expertise or know-how relating to the Equipment and Infrastructure Assets in the Transition Plan, including any updates thereto, unless the Government has elected to acquire such items in accordance with sections 3.4 and 3.6 of this Attachment.
- (c) **Updates to Transition Plan.** In accordance with orders, Contractor shall update the Transition Plan every six months in PY06 and PY07 and at least on a quarterly basis thereafter during the remaining term of this Contract, and provide written notification and content of such updates to Government.

2.3 Transition Planning Inventories.

In accordance with orders, Contractor shall provide and update the following inventories, as described below:

- (a) **Equipment and Infrastructure Asset Inventory.** Contractor shall, within 45 days of the Government's placement of an order, deliver an initial inventory of Equipment and Infrastructure Assets (the "Equipment and Infrastructure Asset Inventory"). The format and content of the Equipment and Infrastructure Asset Inventory will be mutually agreed, and will provide reasonably sufficient information that will enable Government to understand the type, nature, location and use of the Equipment and Infrastructure Assets for purposes of exercising its rights under Section 3.4 of this Attachment and will not include any inventory of the Legacy Assets.
- (b) **Third-Party Services Contracts and Third-Party Software Licenses Inventory.** Contractor shall, within 45 days of Government's placement of an order, deliver an initial inventory of the Third-Party Services Contracts and Third-Party Software Contracts (the "Third-Party Contract and License Inventory"). The format and content of the Third-Party Contract and Licenses Inventory will be mutually agreed, and will provide reasonably sufficient information which will enable Government to understand the nature of the services and software being licensed and their use in providing the NMCI Services for purposes of exercising its rights under Section 3.5 of this Attachment.

- (c) Contractor Proprietary Software and Other Intellectual Property Inventory. Contractor shall, within 45 days of Government's placement of an order, deliver an initial listing of Contractor Proprietary Software and categories of Other Intellectual Property (the "Contractor Intellectual Property Inventory"). The format and content of the Contractor Intellectual Property Inventory will be mutually agreed, and will identify the types and nature of the Contractor Proprietary Software and Other Intellectual Property and provide general information which will enable the Government or its Successor Contractor(s) to understand their use in providing the NMCI Services for purposes of exercising its rights under Section 3.6 of this Attachment.
- (d) Delivery of and Updates to Inventories. In accordance with orders under the Transition Planning CLIN, after delivery of the first inventory under the preceding subparagraphs Contractor shall thereafter update each inventory at the middle and end of Program Year 06 and Program Year 07 and on a quarterly basis thereafter during the remaining term of this Contract, and provide written notification and content of such updates to the Government.
- (e) Format of Inventories. The inventories to be delivered under the preceding subparagraphs will be formatted in an NMCI-compatible database format that will enable the parties to access and Contractor to update the information contained therein.
- (f) Support Contractor Access to Inventories. Government agrees that it will obtain the written consent of the Contractor Contract Manager prior to disclosing the inventories to any third party. Contractor may condition the access by any Support Contractor to the inventories on nondisclosure and other terms that Contractor deems necessary and that do not otherwise conflict with the contract or existing non-disclosure agreements between Contractor and the Support Contractor. For nondisclosure to be effective, Contractor must mark inventories with the marking legend set forth in Section 2.4.

2.4 Marking of Contractor Intellectual Property and Proprietary Information.

Contractor shall conspicuously and legibly mark, and the Government shall not remove, the below legend on hard or soft copies of documents and other tangible embodiments of Contractor Proprietary Software and Other Intellectual Property to which such access or license is granted to Government. The legend shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring with a notation, or other appropriate identifier. Contractor Proprietary Software and Other Intellectual Property transmitted directly from one computer or computer terminal to another shall contain the below legend. However, restrictions that interfere or delay with the operation of computer software in order to display the below legend or other license statement any time prior to or during use of the computer software, or that otherwise cause such interference or delay, shall not be inserted into Contractor Proprietary Software or Other Intellectual Property without the mutual agreement of Government and Contractor. The legend shall appear as follows:

EDS PROPRIETARY INFORMATION
Contract No. N00024-00-D-6000
Electronic Data Systems Corporation
13600 EDS Drive, Herndon, VA 20171

This document contains commercial confidential and proprietary information of Electronic Data Systems Corporation (EDS). This information is to be used only within the Department of the Navy and only for the purposes specifically authorized in writing by EDS in connection with the performance of the NMCI Contract (Contract No. N00024-00-D-6000). Do not use, modify, reproduce, release, perform or disclose this proprietary information (or any portion thereof) outside of the Department of Navy without prior written authorization by the

EDS Contracts Manager. This notice shall be marked on any authorized reproduction of this document, in whole or in part.

2.5 Occasional Temporary Government Access to Contractor Proprietary Information or Intellectual Property.

- (a) Government Requests for Access. The Government and its Support Contractor(s) may occasionally need limited and temporary access to Contractor's Other Intellectual Property for purposes of emergency repair and overhaul of the NMCI network for obtaining network security approvals by designated Government authorities; or for maintenance of Government equipment or facilities collocated with Contractor's NMCI network equipment or facilities; or for other agreed upon purposes during Contract performance. Upon such a need, the Government will request such access from the Contractor, explaining what Other Intellectual Property it needs to access and for what purpose. If Support Contractor access is required, the Government will so advise the Contractor and provide the identity and when feasible the names of the personnel of the Support Contractor who will need such access.
- (b) Grant of Access, Limitation on Access. Upon receipt of a written Government request for such access to Other Intellectual Property, Contractor agrees to promptly grant Government and its Support Contractors reasonable, limited and temporary access to such Other Intellectual Property solely for purposes identified. The Government agrees that Contractor may condition such access on reasonable non-disclosure and other terms that Contractor deems necessary to protect such proprietary information or Other Intellectual Property (or any part thereof) from unauthorized or inadvertent use, modification, display, reproduction, performance, disclosure or release.. The Government is not permitted to disclose or use the information provided through this Section 2.5 for any purpose other than as specifically authorized by Contractor in writing pursuant to this subsection (b), or as specifically authorized in a license agreement executed by the Parties pursuant to Section 3.6(e) below.

2.6 Offerors Access to Contractor's Facilities.

- (a) Mutually-Agreed Rules for Access. The Government and Contractor agree that once the Government has received proposals in response to a Request for Proposals for the recompetition of these requirements, Offerors may need to perform due diligence reasonably necessary to ascertain the nature of the efforts to refine their bids on the successor contract(s) to provide services similar to NMCI Services. Beginning 180 days prior to the Government's issuance of its solicitation for proposals to recomplete these requirements, the Government and Contractor shall develop mutually agreed to rules that will set forth the scope, duration, frequency, procedures and processes governing of Offerors' access to Contractor's facilities. Contractor agrees to assist the Government in granting Bidding Contractors limited and temporary access to Contractor's facilities used in providing NMCI Services and that is reasonably necessary for the Bidding Contractors to evaluate the existence, character, quality and quantity of conditions that may affect the Bidding Contractors' ability to submit a bid for services similar to NMCI Services.
- (b) Limitations on Access. Contractor shall not be required to grant Offerors access to any Contractor facilities that are not used in direct support of the NMCI Services, nor shall Contractor be required to grant Offerors access to any inventories maintained under section 2.3 of this Attachment, nor shall Contractor be required to disclose to Offerors, directly or indirectly, any Contractor Proprietary Software or Other Intellectual Property or any third-party software and other intellectual property. Contractor shall not be obligated to provide to the Government or any other third party any information that it reasonably considers to be commercial confidential information prior to any award by Government of a successor contract pursuant to which all or a part of the NMCI Services will be provided. Similarly, Contractor shall not be obligated to provide any forecasts or other planning models for periods of time after the expiration, cancellation or termination of this Contract.
- (c) Government Use of Transition Inventories. The Department of Navy may use any transition planning inventories or information derived or compiled there from in any way it deems appropriate, including as part of any efforts to solicit proposals for future NMCI Services, provided that such use does not result in

the disclosure of such inventories or information derived therefrom outside of the Department of Navy. To the extent that the Department of Navy does disclose any transition planning inventories or information derived or compiled therefrom, it shall do so subject to paragraph 2.3(f).

3. CONTRACT TRANSITION ASSISTANCE SERVICES.

3.1 General.

The Government may order, and Contractor shall provide, the Contract Transition Assistance Services at any time during the Transition Assistance Period. As part of Contract Transition Assistance Services, Contractor shall provide training and other assistance to the Government or its Successor Contractor(s) in the transition from Contractor to the Government, or its Successor Contractor(s), of (i) the performance of the NMCI Services, (ii), if applicable, the operation of the Transitioned Assets, (iii) if applicable, performance under Transitioned Third-Party Services Contract and performance and application under Transitioned Third-Party Software Contracts, respectively, and (iv) if applicable, the performance and application of Licensed Software and Other Intellectual Property. Contractor shall provide the Government or its Successor Contractor(s) with the information and Contract Transition Assistance Services specified in the Transition Plan, in order to facilitate activities by the Government or its Successor Contractors such as:

- (a) Continued performance and management of all operation and lifecycle-support services that are required to perform the NMCI Services, including, i) operating the NMCI in a manner so as to comply with contract provisions and performance standards; ii) maintaining the NMCI compliance with applicable Government technical standards and specifications; iii) maintaining the NMCI information-assurance posture; iv) performing technical refresh so as to avoid obsolescence of NMCI components; v) maintaining currency of information-assurance certification and accreditation status for the NMCI and all of NMCI sites and applications.
- (b) Continued integration and management of ongoing technical and architectural modifications to the NMCI such as transition to IPv6, upgrades to client operating systems and modifications to comply with emerging Government policy and architectural requirements.
- (c) Continued management of Transitioned Assets.
- (d) Continued administration of the license rights of Transitioned Third-Party Software Contracts.
- (e) Continued administration of the Transitioned Third-Party Services Contracts.
- (f) Review and monitoring of service-level agreement performance data, including data dating back at least one calendar year prior to the commencement of the Transition Assistance Period to enable qualified subject matter experts of the Government or its Successor Contractor(s) to use such information to support successful transition.
- (g) Review and management of the detailed physical and logical-configuration data representing the details of the NMCI to enable qualified subject matter experts of the Government or its Successor Contractor(s) to use such information to support transition.
- (h) Development of a staffing plan, including a plan for use of replacement support contractors to operate the NMCI Services.
- (i) Review and implementation of operational procedures for continued use by NMCI Network Operations Center (NOC) personnel in daily NMCI Services operations.
- (j) Implementation of the System Security-Accreditation Agreements (SSAAs) and Approvals to Operate (ATOs) and other such agreement and certifications necessary for the continued operation of the NMCI Services and all of its sites, applications, and devices.

3.2 Contract Transition Assistance Period.

- (a) **Transition Assistance Period.** The Transition Assistance Period starts upon receipt of a notice of termination for default or convenience, or no later than 1 April 2010, whichever occurs first or as the parties may otherwise agree. Contractor shall provide Contract Transition Assistance Services, if ordered, up until one year after the effective date of termination for default or convenience or up until 30 September 2010. Notwithstanding any contrary direction or notice from the Government, the Transition Assistance Period shall not be longer than one year (12 months) unless extended by mutual written agreement of the Government and the Contractor and will not continue beyond 30 September 2010.
- (b) **Establishment of NMCI Freeze-Date.** If this Contract is terminated, the NMCI Freeze Date shall be the effective date of the notice of termination for default or convenience. If this Contract expires, the NMCI Freeze Date shall be September 30, 2010. In no event shall Contractor be held responsible or otherwise liable for the failure of the NMCI network to operate without interruption or for any performance, enhancement or security standards after the NMCI Freeze Date.
- (c) **Government Management.** During the Transition Assistance Period, Contractor shall not be responsible for managing or supervising the staff of the Government or, as applicable, the staff of the Successor Contractor(s). If there is more than one Successor Contractor, the Contractor shall not be responsible for managing the coordination among all Successor Contractors. During the Transition Assistance Period, the Government shall manage its effort to effectuate an orderly, systematic, coordinated and sequential transition of NMCI Services by the end of the Transition Assistance Period.
- (d) **Contract Terms and Conditions.** Except as provided in Section 3.2(b) of this Attachment, during the Transition Assistance Period, all applicable terms and conditions of this Contract shall remain in full force and effect. Paragraph 6.15.2 of the contract addresses service level agreements in the context of transition. In the event the Government partially terminates the Contract, during the Transition Assistance Period following such partial termination of this Contract, all applicable terms and conditions of this Contract shall remain in full force and effect as to the portion of the Contract not terminated for those contract activities for which Contractor has sole responsibility. However, those terms and conditions of this Contract relating to service level agreement and credits will not continue to apply to the terminated portion of the Contract or to contract activities for which Contractor is not solely responsible. At the expiration of the Transition Assistance Period, Contractor shall have no further obligation to perform any services unless separately agreed to by the parties.

3.3 Contract Transition Meetings.

- (a) **Frequency and Scope of Meetings.** Contractor, the Government and the Successor Contractor(s) shall formally meet on at least a weekly basis or more frequently, as required, during the Transition Assistance Period. At the meetings, Contractor shall provide written updates and information or presentations summarizing status of the Transition Plan and transition progress to date, if such Transition Plan was ordered.
- (b) **Government Participation; First Meeting.** The first transition meeting shall be held no later than fourteen (14) days of commencement of the Transition Assistance Period. At the first meeting, Contractor shall provide the most recent Transition Plan and the inventories provided under Section 2.3 of this Attachment, if such inventories were ordered. The Government and its Successor Contractor(s) shall facilitate Contractor by assisting in an orderly transition of the NMCI Services from Contractor to the Government or its Successor Contractor(s).

- (c) Transition Purchase Election Notification. Within 30 days after the first transition meeting, the Government shall notify Contractor in writing of the Government's election to acquire items pursuant to paragraphs 3.4(b), 3.5(b) and 3.6(b) of this Attachment. The Government shall have 45 days from the submission of that notice to modify in writing its notice after which Contractor shall have the right to sell or license the items which the Government has not elected to acquire. Prior to this written notification, Contractor shall not be required to perform any Contract Transition Assistance Services which will result in disclosure of any Contractor Proprietary Software or Other Intellectual Property or other know-how, expertise or proprietary information.

3.4 Transition of Equipment and Infrastructure Assets.

- (a) Equipment and Infrastructure Assets Inventory. At the first meeting after commencement of Contract Transition Assistance Services, Contractor shall provide the Government and its Successor Contractor(s) an updated version of the Equipment and Infrastructure Asset Inventory, if such inventories were ordered. Upon Government's request, Contractor shall provide reasonable access to databases, and documentation which will permit the Government and its Successor Contractor(s) to validate the Net Book Value of the Equipment and Infrastructure Assets.
- (b) Evaluation of Assets; and Option to Purchase, Equipment and Infrastructure Assets. The Government has the option to purchase from Contractor at the then-current Net Book Value all, or a part of, the Equipment and Infrastructure Assets owned by Contractor, and to assume from Contractor all, or a part of, the Equipment and Infrastructure Assets leased by Contractor (provided such leases are assumable). The Government will notify Contractor of its intent to acquire all, or a part of, the Equipment and Infrastructure in accordance with paragraph 3.3(c).

Contractor shall reasonably cooperate with the Government to facilitate transition to a designated Successor Contractor(s) of all or part of the Equipment and Infrastructure Assets and Legacy Assets, all upon the terms and conditions set forth herein.

- (c) Net Book Value Defined. As used herein, when used in regards to an owned Equipment and Infrastructure Asset, "Net Book Value" shall mean the historical cost of such asset, less accumulated depreciation calculated on a straight line basis measured monthly from the entered service date to the date of determination based upon the useful life of such asset as set forth in Attachment 16, Schedule 1 - "Asset Useful Life"; "historical cost" shall mean the purchase price of the asset plus external costs incurred to bring the asset to the condition and location necessary for its intended use; and "external costs" include but are not limited to, sales taxes, tax liability fairly attributable to the acquisition, use, or ownership of that asset, installation costs, freight, and any other cost required to make the asset ready for use.
- (d) Payment for and Transfer of Transitioned Assets and Legacy Assets. Government shall make payment to Contractor for transfer of Transitioned Assets and Legacy Assets in accordance with Contract Section 5.9.3. Upon receipt of payment of the Purchase Price by Contractor, all right, title and interest of owned Transitioned Assets and Legacy Assets will transfer to Government or its Successor Contractor(s) on an "AS IS, WHERE IS" basis. Upon execution of novation agreements among the Contractor, the lessor and either the Government or its Successor Contractor(s), all right, title and interest of leased Transitioned Assets will transfer to the Government or its Successor Contractor(s). As used herein, the Purchase Price shall mean the aggregate of the individual Net Book Values as of the date of termination or expiration of this Contract of each owned Transitioned Asset, calculated in accordance with the subparagraphs above, increased by the Legacy Asset Transfer Value reflected in Attachment 16, Schedule 2 - "Schedule Of Legacy Asset Transfer Value. Any sales, use or similar tax owed in connection with the purchase or assumption of leases for, and subsequent use, of the Transitioned Assets is separate from and in addition to the Purchase Price described above.
- (e) Transitioned Assets and Legacy Assets Documentation. In the event that the Government exercises its right to acquire the Transitioned Assets, Contractor shall provide the Government or the Successor

Contractor(s) any materials, documentation, technical manuals, user manuals, and other written information that describes the function and use of the Transitioned Assets and Legacy Assets (which do not constitute Other Intellectual Property), which were provided by the original equipment manufacturer and which are in Contractor's possession.

3.5 Transition of Third-Party Services Contracts and Third-Party Software Licenses.

- (a) Third-Party Services Contracts and Third-Party Software License Inventory Required. At the first meeting after commencement of the Contract Transition Assistance Services, Contractor shall provide the Government or its Successor Contractor(s) an updated version of the Third Party Contract and License Inventory, if such inventories were ordered.
- (b) Option to Purchase/License. The Government has the option to purchase or license from Contractor all, or a part of, the Third-Party Services Contracts and Third-Party Software Licenses. As applicable, the Government shall require the Successor Contractor(s) to assume such identified third-party services contracts and third-party software licenses. The Government will notify Contractor of its intent to acquire all, or a part of, the Third-Party Services Contracts and Third-Party Software Licenses in accordance with section 3.3(c).
- (c) Transfer of Contracts/Licenses. Contractor shall use commercially reasonable efforts to transfer or assign to Government or its Successor Contractor(s) all of its rights and obligations under the Transitioned Third-Party Services Contracts and Transitioned Third-Party Software Licenses on terms and conditions reasonably acceptable to the applicable parties. Upon the Government's request, Contractor shall provide reasonable assistance to Government in Government's procurement of appropriate license and other rights to use such identified third-party software. The Government or its Successor Contractor(s) shall be administratively and financially responsible for obtaining any consents and paying ongoing costs associated with the transfer and ongoing use of any Transitioned Third-Party Services Contracts, Transitioned Third-Party Software Licenses or procured third-party software licenses.
- (d) Contracts/Licenses Documentation. Subject to the prior consent of the third-party supplier under the Transitioned Third-Party Services Contracts and Transitioned Third-Party Software Licenses, Contractor shall provide to the Government or its Successor Contractor(s) any materials, documentation, technical manuals, user manuals, and other written information that describes the function and use of services and other items, if any, customarily provided by the third-party supplier for such services and other items under such third-party services contracts (and which do not constitute Other Intellectual Property) and which are in Contractor's possession.

3.6 Transition of Contractor Proprietary Software and Other Intellectual Property.

- (a) Government Option to License Contractor Proprietary Software and Other Intellectual Property. Government or its Successor Contractor(s) may desire rights to Use the Contractor Proprietary Software and Other Intellectual Property to perform the NMCI Services after this Contract expires or is terminated. The Government may elect to acquire from Contractor a specifically negotiated license to Use all, or a part of, Contractor's Proprietary Software and Other Intellectual Property upon the terms and conditions set forth herein.

Contractor shall reasonably cooperate with the Government to facilitate transition to a designated Successor Contractor(s) a license to use all or part of the Contractor Proprietary Software and Other Intellectual Property, all upon the terms and conditions set forth herein.

- (b) Contractor Proprietary Software and Other Intellectual Property Inventory Required. The Government has the option to license from Contractor all, or a part of, the Contractor Proprietary Software and Other Intellectual Property. The Government will notify Contractor of its intent to acquire all, or a part of, the Contractor Proprietary Software and Other Intellectual Property in accordance with section 3.3(c).

- (c) Representations. Prior to receiving the license fee described in paragraph (d) below, Contractor shall, in a writing signed by an authorized official, represent that it owns or has legal rights to license rights to the Licensed Software and Other Intellectual Property and that it has no knowledge of any suit, action or claim threatened by a third party against the Licensed Software and Other Intellectual Property. Prior to paying the license fee described in paragraph (d) below, the Government and/or its Successor Contractor(s) shall, in a writing signed by an authorized official, represent that it and its Successor Contractor(s) intend to Use the Contractor Proprietary Software and Other Intellectual Property only for NMCI Purposes.
- (d) License; Reservation of Rights. If Government elects to acquire license to Use the Licensed Software and Other Intellectual Property, the Government and Contractor shall enter into a mutually acceptable license agreement pursuant to which, upon payment of the mutually agreed upon license fee (the "License Fee"), said license shall become effective. Contractor reserves all rights not expressly granted in the license. Nothing in this Contract conveys, or shall be construed to convey, any right of ownership of Contractor Proprietary Software and Other Intellectual Property to Government or to its Successor Contractor(s).
- (e) Scope of License Rights Desired by Government. Contractor acknowledges that Government desires that Contractor grant the Government or its Successor Contractor(s) an irrevocable, nonexclusive, nontransferable, worldwide and paid-up license to Use the Contractor Proprietary Software and Other Intellectual Property for NMCI Purposes.
- (f) License Fee. In exchange for Contractor granting a license to the Licensed Software and Other Intellectual Property, Government shall pay Contractor a license fee (the "License Fee") upon mutually agreeable payment terms and in accordance with Contract Section 5.9.3., and the license shall become effective upon payment of the License Fee. Under no circumstances will Contractor be obligated to grant a license to the Government or to its Successor Contractor(s) to Use, or otherwise permit the Government or its Successor Contractor(s) to Use, any Licensed Software and Other Intellectual Property before payment to Contractor by the Government or Successor Contractor(s) of the License Fee. Any sales, use or similar tax owed in connection with the license for the use of the Licensed Software and Other Intellectual Property, and the use of the Licensed Software and Other Intellectual Property is separate from and in addition to the License Fee described above.
- (g) Indemnity for Contractor Intellectual Property. If the Government acquires a license to the Licensed Software and/or Other Intellectual Property, Contractor shall indemnify the Government against liability based upon claims of third parties for actual or alleged direct or contributory infringement of any United States patent, trademark or copyright by the Licensed Software and/or Other Intellectual Property; *provided that* Contractor's total liability shall be capped at 100% of the license price the Government paid for the Licensed Software and Other Intellectual Property. Further, in no event shall Contractor have liability to the Government hereunder if (A) the claim of infringement is based upon the use of Licensed Software and Other Intellectual Property in a manner for which the Licensed Software and Other Intellectual Property was not designed or (B) if the Licensed Software and Other Intellectual Property have been modified and such infringement would not have occurred but for such modification, or uses the Licensed Software and Other Intellectual Property in the practice of a patented process and there would be no infringement in the absence of such practice. The indemnification shall only apply if the Government promptly notifies Contractor of any actual or potential claims or proceedings that may require Contractor indemnification. The Government agrees to cooperate in good faith with Contractor in resolving any infringement action that gives rise to indemnification by Contractor. If the Licensed Software and Other Intellectual Property becomes the subject of a claim under this subparagraph (g), or in Contractor's opinion is likely to become the subject of such a claim, then, Contractor may, at its option and in its sole discretion, (A) replace or modify the Licensed Software and Other Intellectual Property to make it noninfringing or cure any claimed misuse of another's trade secret or (B) procure for the Government the right to continue using the Licensed Software and Other Intellectual Property pursuant to this Contract. Contractor shall not be responsible for any settlement or compromise made without its consent, unless the Government has tendered notice and Contractor has then refused to assume and

defend the claim and it is later determined that Contractor was liable to assume and defend the claim. This clause governs claims of infringement for Licensed Software and/or Other Intellectual Property, but does not govern claims of infringement arising out of performance of this contract which are governed by FAR 52.212-4(h).

- (h) Limitation on Maintenance/Upgrades. Except as may otherwise be expressly agreed in writing by Contractor, after the earlier to occur of the effective date of a license pursuant to paragraph (g) above or the NMCI Freeze Date, Contractor shall not, unless otherwise mutually agreed, be required to maintain, correct any defects to, or provide any upgrades for the Licensed Software and Other Intellectual Property.
- (i) Marking Requirement; No Alteration of Intellectual Property Legends/Markings. Contractor agrees to mark Licensed Software and Other Intellectual Property with the marking legend set forth in Section 2.4. The Government shall not alter, distort, or remove the marking legend of Section 2.4, or statutory copyright, trademark, trade secrets or patent markings from any copy, derivative work or compilation of the Contractor Proprietary Software and Other Intellectual Property. If the Government prepares hard copies of any of the Related Software Documentation associated with such Licensed Software and Other Intellectual Property or any hard copies of the tangible embodiment portions of the Licensed Software and Other Intellectual Property, Government shall include on all such copies the marking legend of Section 2.4, copyright, trademark, trade secrets legend or patent markings previously applied by Contractor to the original, in the same form and substantially the same location as any legends appearing on the original.

3.7 Disclosure of Information to and Non-disclosure of Information by Successor Contractor(s).

Except as otherwise provided by this Contract, Contractor shall not be required to disclose any of its proprietary information, whether in the nature of a trade secret, intellectual property, software or otherwise, to Successor Contractor(s). The Government may disclose the inventories described in Section 2.3 of this Attachment 16 to Successor Contractors following the award of the Successor Contract(s). However, prior to providing any Contract Transition Assistance Services to Successor Contractor(s) or prior to Government disclosing such inventories, the Successor Contractor(s) must enter into a written agreement with Contractor on non-disclosure and other terms, in a form and substance satisfactory to Contractor, that, at a minimum, obligates the Successor Contractor(s) to (i) maintain at all times the confidentiality of any Contractor proprietary information disclosed or provided to, or learned by, the Successor Contractor(s) in connection therewith and (ii) use such information solely for the purposes for which Government is authorized to use such information pursuant to this Contract.

3.8 Transition Training.

Contractor shall provide training to the employees of Government and its Successor Contractor(s) (or both) who will be assuming responsibility for the NMCI Services after the Transition Assistance Period on operation of the Transitioned Assets, and the Licensed Software and Other Intellectual Property. All such training shall be part of, and paid for as, part of the Contract Transition Assistance Services, if ordered. If Government does not elect to purchase Equipment and Infrastructure Assets or acquire a license to Contractor Proprietary Software and the Other Intellectual Property, Contractor shall not be required to transfer as part of the training any knowledge, or expertise that relates in any way to the Equipment and Infrastructure Assets not acquired or to the Contractor Proprietary Software and Other Intellectual Property not licensed.

3.9 Government and Successor Contractor Responsibilities.

The Contractor only will be responsible for any defect, delay and deficiency it causes and which occur during the transition of performance of the NMCI Services and of operation of Transitioned Assets, and the Licensed Software and Other Intellectual Property. The Government and Contractor also agree that the Contractor will not be responsible for any defects, delays or deficiencies caused by the Government or Successor Contractor(s) which occur during the transition of performance of the NMCI Services and of operation of the Transitioned Assets and, Licensed Software and Other Intellectual Property. In addition, the Government and the Contractor agree that the Contractor shall have no responsibility for the incorporation of any technical or architectural

modifications to the NMCI after the NMCI Freeze Date. Under no circumstances will the Successor Contractor(s) be considered agent(s) or representative(s) of the Contactor. In no event, shall Contractor be responsible or liable for any defects, delays or deficiencies arising or relating to the Government's or its Successor Contractor(s) furnishing of equipment and infrastructure assets comparable to the portion of Equipment and Infrastructure Assets not acquired, and software and other intellectual property comparable to Contractor Proprietary Software and Other Intellectual Property not licensed.

4. MISCELLANEOUS.

4.1 NMCI Services Post Termination.

The Government and Contractor acknowledge and agree that during that portion of the Transition Assistance Period following the termination of all or part of this Contract, Contractor shall continue to provide, at Government's request, all, or a part of the NMCI Services affected by the termination. Such services are separate from and not included within the Contract Transition Assistance Services. Contractor shall be compensated for providing such services at the applicable CLIN prices set forth in the then current Table and in accordance with Contract paragraph 5.9.3.

4.2 No Guarantee or Credit Arrangements.

In connection with the transition of NMCI Services, assumption of third-party service contracts, procurement of third-party software licenses, transition of operation of Transitioned Assets, Licensed Software and Other Intellectual Property, and any other activity, Contractor shall not be required to extend any credit to, nor guarantee the payments or performance of, the Support Contractor(s).

4.3 Return of Confidential Information.

For any Equipment and Infrastructure Assets, Third-Party Services Contracts, Third-Party Software Licenses, Contractor Proprietary Software or the Other Intellectual Property for which the Government or its Successor Contractor(s) do not elect to acquire or license, the Government and its Successor Contractor(s) shall, within a reasonable time period after this Contract is terminated or after 30 September 2010, at Contractor's direction destroy or return to Contractor any information in their possession regarding such Equipment and Infrastructure Assets, Third-Party Services Contracts, the Third-Party Software Licenses, the Contractor Proprietary Software or the Other Intellectual Property, respectively.

4.4 No Cost or Pricing Data.

Nothing in Section 1.2 of this Contract or in this Attachment shall require Contractor to submit or provide certified cost and pricing data, to submit or provide other information regarding separate cost elements, or comply with Government cost principles or cost accounting standards, in connection with the transition of NMCI Services, Transitioned Assets, Licensed Software and Licensed Other Intellectual Property, the Transitioned Third-Party Services Contracts and Transitioned Third-Party Software Licenses under this Contract.

Schedule 1 to Attachment 16

ASSET USEFUL LIFE

Asset Category	Description	Useful Life
End User Hardware - 3	This category includes 3 year depreciable devices including but not limited to end user devices such as laptop computers, some desktop computers* and their associated monitors, keyboards, mice, docking stations, external peripherals (CD/DVD drives, Zip drives, etc), personal digital assistants, and cell phones. *up to 10% of desktop computers will be classified as 3 year useful life assets (designated by the Government as "power users")	3 years
End User Hardware - 4	This category includes end user devices such as desktop computers* and the associated monitors, keyboards, mice, docking stations, and external peripherals (CD/DVD drives, Zip drives, etc.) *at least 90% of desktop computers will be classified as 4 year useful life assets (excludes designated "power users")	4 years
End User Hardware - 5	This category includes 5 year depreciable devices such as printers, multifunction devices (printer/copier/scanner/fax), desk top telephones, and audio and video teleconference end user equipment. In this context end users include all NMCI account holders including NMCI prime and subcontractor account holders.	5 years
Moveable Infrastructure	This category includes 5 year depreciable devices including but not limited to all Internet Protocol (IP) addressable devices that are not end user devices such as servers, routers, switches, gateways, VPN devices, cryptographic devices, WAN accelerators, firewalls, intrusion detection devices, and other security devices.	5 years
External Cable	This category includes all outside cable plant (fiber, copper, radio frequency, free air optical, etc.) up to but not including the first intelligent (IP) device in or on each building. This category will be depreciated on a 20 year schedule.	20 years
Inside Cable and Facilities	This category includes all 20 year depreciable material that is not in the outside cable plant including but not limited to inside cable plant (fiber, copper, etc.), wiring closet, telecommunication room, server farm, NOC and help desk components that are not End User, Moveable Infrastructure, or External Cable Plant. This category includes building upgrades necessary to support server farm and NOC operations such as raised flooring, partitions, air conditioning, normal power and emergency power components, etc.	20 years
Buildings	This category includes buildings constructed from the ground up by Contractor.	39 years

Attachment 16, Schedule 2
Schedule of Legacy Asset Transfer Value

If this Contract is terminated or expires in any Program Year listed in the table below, then the Legacy Asset Transfer Value shall be the value in the second column in the table below, even if the Legacy Assets are actually transferred on a date after the end of the Program Year.

Program Year	Legacy Asset Transfer Value
PY06	\$10M
PY07	\$9M
PY08	\$8M
PY09	\$7M
PY10	\$6M